

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

IN RE: ESTATE OF

ROBERT ALFRED SAFRANEK,

Deceased.

Case No. 502012CP000739XXXXSB
Probate Division "IY"

2012 OCT 29 PM 2:52
CLERK OF COURT
PALM BEACH COUNTY
SOUTH CITY BRANCH

Motion to Stay Appointment of Successor Personal Representative

David Porter and Susan Berns Porter, as Co-Trustees of the SaFranek Family Trust, dated October 2, 2007 (the "Trust") move to stay the appointment of Successor Personal Representative Dean Rosenbach, Esq., as follows:

1. Steven Berns filed two Statements of Claim ("Claim") against this Estate, to the initial Personal Representative, Marian Axelrod, and Mr. and Mrs. Porter as Co-Trustees, objected.

2. Mr. Berns then filed an independent action (the "Berns action") against Ms. Axelrod, as personal representative of the Estate and against Mr. and Mrs. Porter, as trustees. Axelrod, joined by Mr. and Mrs. Porter, have vigorously defended that action. In fact, the Estate's and Porter's Motion to Dismiss the Berns action is set for hearing in the civil division on December 10, 2012. Moving and opposition papers previously were filed by all parties, and the reply brief is already substantially completed. If the Motion to Dismiss is granted, the Berns action, which is the sole remaining disputed claim, will be dismissed and the Estate can be promptly closed.

3. Ms. Axelrod, unfortunately, was compelled to resign as personal representative for health reasons.

4. Over the objection of Mr. and Mrs. Porter, Mr. Rosenbach was appointed as Successor Personal Representative. Mr. Rosenbach's appointment is currently on appeal. A copy of the Notice of Appeal is attached hereto as Exhibit "A."

5. Mr. Rosenbach recently engaged Katz & Doorakian Law Firm, PL ("Doorakian"), to represent him as Successor Personal Representative.

6. By letter of October 22, 2012, Doorakian demanded that the Trust advance to the Estate an initial retainer of **\$300,000.00** to fund the Estate's defense of:

- a. The Berns action; and
- b. The appeal of Mr. Rosenbach's appointment as Successor Personal Representative.

A copy of the Doorakian demand is attached hereto as Exhibit "B."

7. There is no valid reason for the Estate to incur this inordinate expense at the direct expense of the Trust beneficiaries.

8. The appeal is not complex and should not cause the Estate to incur substantial attorneys' fees. The issue is a simple question of law based on the interpretation of Section 733.301, Florida Statutes. Indeed, the personal representative should not have an opinion as to his own appointment since the issue is whether the Trust, or the potential Estate creditor, or both are "persons entitled to the estate" for purposes of selecting the successor personal representative. This appeal does not involve matters as to Mr. Rosenbach's qualifications or any other issues to which his opinion would arguably be relevant.

9. The Berns action has been and continues to be defended appropriately by Mr. and Mrs. Porter, who are not only named defendants, but are the real parties in interest. Mr.

Rosenbach has already agreed that the Berns action should be defended, and that is already being fully and adequately accomplished by the Porters. Thus, the Estate would not be prejudiced by a stay of Mr. Rosenbach's appointment pending the outcome of the appeal.

10. Should the Court be disinclined to stay Mr. Rosenbach's appointment in its entirety, the Court should nevertheless appoint Mr. and Mrs. Porter as Administrators ad Litem for the purpose of defending the Berns action.

11. Mr. and Mrs. Porter, as the Co-Trustees of the Trust, are the sole beneficiaries of the Decedent's Will. Mrs. Porter, individually, is both a specific and the residuary beneficiary of the Trust. The Trust is the only potential source of payment should Mr. Berns prevail in the action. Thus, Mr. and Mrs. Porter have a strong direct interest in defending the Berns action, and have vigorously done so.

12. Mr. and Mrs. Porter are direct party defendants to the Berns action, and have so since its inception. Both they and their attorneys are completely familiar with the factual and legal issues in dispute in the Berns action, and have already fully analyzed and briefed the issues advance of the December 10, 2012 hearing. Mr. and Mrs. Porter can defend the Berns action effectively and efficiently than could a Successor Personal Representative with separate counsel who would need to expend time and fees duplicating the detailed research and analysis which already been done, and otherwise getting "up to speed" on the Berns action.

13. The \$300,000 retainer demanded by Doorakian is roughly 20% of the entire Trust value, and far exceeds anything that has been incurred by the Porters in fees and costs since the inception of this action nine months ago despite the extensive research, analysis, briefing, and litigation effort that has gone on to date. Anything Mr. Rosenbach is going to do at this point

E/O Robert Safranek

Case No.: 502012CP000739XXXXSB IY

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Page 4

toward the defense is simply going to unnecessarily duplicate what has already been done to the express detriment of the Trust, its beneficiaries, and even potential creditors such as Mr. Berns.

WHEREFORE Movants request the entry of an Order staying the appointment of Mr. Rosenbach pending the outcome of Movants' appeal of his appointment or, in the alternative, relieving Mr. Rosenbach of responsibility for the defense of the Berns action and appointing Mr. and Mrs. Porter, as Co-Trustees, as Administrators ad Litem for that purpose.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Email to the parties on the attached service list; this 25th day of October, 2012.

BOYES & FARINA, P.A.

By: 

John Farina, Esquire

Florida Bar No.: 612146

3300 PGA Boulevard, Suite 600

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SERVICE LIST

IN RE: ESTATE OF ROBERT ALFRED SAFRANEK
Case No. 502012CP000739XXXXSB
Probate Division "IY"

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Counsel for Dean Rosenbach, as Successor P/R

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

IN RE: ESTATE OF

ROBERT ALFRED SAFRANEK,

Deceased.

Case No. 502012CP000739XXXXSB
Probate Division "IY"

NOTICE OF APPEAL

Appellants, David Porter, as Co-Trustee of the SaFranek Family Trust Agreement, and Sue Berns Porter, as Co-Trustee of the SaFranek Family Trust Agreement, by and through their undersigned counsel, give notice that they appeal to the District Court of Appeal, Fourth District, the Court's Order on Petition for Appointment of Successor Personal Representative, dated September 11, 2012, a conformed copy of which is attached hereto as Exhibit "A." The nature of the Order is an order entered in a probate proceeding refusing to appoint a personal representative. See Fla. R. App. P. 9.170(b)(7).

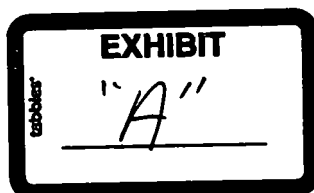
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to: Jan Michael Morris, Esq., at morrisdocketing@themorrislawoffice.com; jan@themorrislawoffice.com, and schwartz@kolawyers.com; this 18 day of September, 2012.

BOYES & FARINA, P.A.

By: _____

John Farina Esquire
Counsel for Appellants
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3300 PGA Boulevard, Suite 600
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Telephone: (561) 694-7979
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE /GUARDIANSHIP DIVISION "TY"**

CASE NO. 502012CP000739XXXXSB

**IN RE: ESTATE OF
ROBERT ALFRED SAFRANEK,**
Deceased.

**ORDER ON PETITION FOR APPOINTMENT OF SUCCESSOR PERSONAL
REPRESENTATIVE**

THIS CAUSE to be heard on July 27, 2012 on the Petition for Appointment of Successor Personal Representative and the Objection thereto. Subsequent to the hearing, the Court invited and received points and authorities from counsel, along with spirited views of the manner in which each party followed the Court's instructions. Based upon the foregoing, it is

ORDERED AND ADJUDGED as follows:

1. In this testate estate, the chosen Personal Representative Marian Axelrod, resigned before administration of the estate is completed.
2. The decedent's will could not provide for a successor personal representative.
3. F.S. 733.301 controls and states that the preferred successor personal representative be the person selected by a majority in interest of the persons entitled to the estate.
4. The Petitioners' are the co-trustees of the trust that is the named beneficiary of the estate.
5. The Objector is a creditor and claimant who has filed an independent action that is pending in the circuit civil division of this Court which the successor personal representative will be required to defend.
6. Petitions seek Judd Rowe, Esquire and the Objector seeks Seth Marmor.



Esquire, as successor personal representative.

7. The Court determines that there are two persons that may be entitled to the estate; that is, the Trust and the Objector and as a result, there is no majority entity to select a successor personal representative.
8. There is a need in this case to tone down the intensity of the litigation between the parties especially given the apparent lack of assets in the estate subject to probate.
9. Based upon the authority in *In Re Estate of Snyder* 333 So. 2nd 519 (2 DCA 1976) the Court declines to select the lawyer desired by the parties and instead finds that it is more appropriate to appoint a successor personal representative who is independent of the parties and their lawyers and who will best serve the interests of this estate.
10. As a result, the Court appoints Dean Rosenbach, Esquire, 11430 US Highway 1 North Palm Beach, Fl. 33408 as Successor Personal Representative and Counsel for Petitioners shall submit letters of administration and an order appointing Dean Rosenbach, Esquire to serve without bond.

DONE AND ORDERED in chambers, at Delray Beach, Palm Beach County, Florida this 11th day of September, 2012.

MARTIN H. COLIN
Circuit Court Judge

SIGNED & DATED
SEP 11 2012
JUDGE MARTIN H. COLIN

Copies furnished:

**William E. Boyes, Esquire
Counsel for Petitioners
3300 PGA Blvd, Suite 600
Palm Beach Gardens, Fl. 33410**

**Dean Rosenbach, Esquire
Successor Personal Representative
11430 US Highway 1
North Palm Beach, Fl. 33408**

**Jan Michael Morris, Esquire
Attorney for Objector
P.O. Box 276153
Boca Raton, Fl. 33427**

NOT A CERTIFIED COPY

KATZ & DOORAKIAN LAW FIRM, P.L.
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October 22, 2012

Sent via Email and U.S. Mail to:

John Farina, Esq.
Boyes & Farina, P.A.
3300 PGA Blvd., Suite 600
Palm Beach Gardens, FL 33410

RE: E/O Robert A. SaFranek / Case No.: 502012CP000739XXXXSB

Dear Mr. Farina:

This office has been retained to represent Dean Rosenbach, Esq. in his capacity as Successor Personal Representative of the Estate of Robert A. SaFranek ("Estate"). As you know, the Estate is currently involved in the following two (2) litigations: (a) an independent action wherein the Estate is defending against a claim filed by Steven Berns and (b) an appeal wherein the Estate is defending the Probate Court's appointment of the Successor Personal Representative. Article X of the Amendment and Restatement of the SaFranek Family Trust Agreement dated October 2, 2007, as amended ("Trust"), provides that the Trustee of the Trust may pay to the Estate such amounts as may be needed to pay all or any part of the administration expenses of the Estate. Since the Estate does not have sufficient assets to participate in both litigations, the Successor Personal Representative submits that, pursuant to the terms of the Trust and Florida law, the cost of the litigations is an administration expense of the Estate that should be paid by the Trust.

In accordance with F.S. §733.607(2), the Successor Personal Representative certifies that the amount of Three Hundred Thousand U.S. Dollars (\$300,000.00) is initially required to satisfy the insufficiency. Depending on how these litigations and other Estate matters evolve, additional funds may be required. In the event these matters settle or are resolved, any unused balance remaining will promptly be returned to the Trust. Kindly have the Trust send us a check made payable to the Estate at the above address or call me and we will furnish you with wire transfer instructions.



Should you have any questions, please free to contact me at (561) 721-6730. Thank you for your anticipated cooperation with this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel Doorakian". The signature is fluid and cursive, with a large initial "D".

Daniel Doorakian

cc: client

NOT A CERTIFIED COPY